

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

TYLER G BRADY

Claimant,

and

IOWA WORKFORCE DEVELOPMENT

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HEARING NUMBER: 09B-UI-10726

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.3-7

DECISION

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

A representative issued a decision dated June 11, 2009 (Ref 01) that concluded the Claimant was ineligible to receive benefits due to severance payments. The Claimant appealed that decision and in appeal 09A-UI-10724 the Administrative Law Judge affirmed based on a finding that the appeal was untimely. The Administrative Law Judge issued a separate decision in case 09A-UI-10726 finding an overpayment of \$772.00. The Claimant timely appealed the Administrative Law Judge's disqualification decision. In a concurrently issued decision in case 09A-UI-10724 the Board today finds the appeal to the Administrative Law Judge timely and thus reverses and remands the Administrative Law Judge's disqualification decision. The Board now in this decision reverses the overpayment decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code Section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment. If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The Board concludes that the Claimant has not been overpaid unemployment insurance benefits in the amount of \$2,368.00 pursuant to Iowa Code section 96.3-7 as the disqualification decision that created the overpayment decision has now been reversed.

DECISION:

The administrative law judge's decision dated August 13, 2009 is **REVERSED**. The Employment Appeal Board concludes, at this time, that the Claimant was not overpaid benefits. If, on remand in the disqualification case, the Administrative Law Judge concludes that the Claimant should be disqualified then a new overpayment may be imposed at that time.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

RRA/fnv